

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 79

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO BOATS; CHANGING REQUIREMENTS AND DUTIES PERTAINING TO BOAT DEALER AND MANUFACTURER NUMBERS; REQUIRING BOAT DEALERS AND MANUFACTURERS TO OBTAIN DEALER LICENSES; ESTABLISHING REQUIREMENTS AND DUTIES PERTAINING TO DEALER LICENSES; ESTABLISHING LICENSE FEES; PROVIDING A PENALTY; AMENDING, REPEALING AND ENACTING A SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-4-1 NMSA 1978 (being Laws 1978, Chapter 35, Section 214, as amended) is amended to read:

"66-4-1. DEALERS, WRECKERS, WHOLESALERS AND DISTRIBUTORS OF VEHICLES AND TITLE SERVICE COMPANIES MUST BE LICENSED-- PRESUMPTION OF CONDUCTING BUSINESS. --

A. ~~[No]~~ A person, unless licensed to do so by the department, shall not carry on or conduct the active trade or

1 business of:

2 (1) a dealer in motor vehicles of a type
3 subject to registration pursuant to the Motor Vehicle Code,
4 including:

5 (a) trailers, but not trailers sold as
6 kits;

7 (b) recreational vehicles designed to be
8 towed; and

9 (c) motorcycles over fifty-five cubic
10 centimeters;

11 (2) [~~wrecking or~~] dismantling any vehicle for
12 the resale of the parts. Any person possessing three or more
13 wrecked, dismantled or partially wrecked or dismantled vehicles
14 and selling or offering for sale a used vehicle part and who
15 regularly sells or offers for sale used vehicles or used
16 vehicle parts shall be presumed to be conducting the business
17 of wrecking or dismantling a vehicle for the resale of the
18 parts;

19 (3) wholesaling of vehicles. Any person who
20 sells or offers for sale vehicles of a type subject to
21 registration in this state, to a vehicle dealer licensed
22 pursuant to the Motor Vehicle Code or who is franchised by a
23 manufacturer, distributor or vehicle dealer to sell or promote
24 the sale of vehicles dealt in by such manufacturer, distributor
25 or vehicle dealer shall be presumed to be conducting the

1 business of wholesaling [~~provided, however, that if any such~~
 2 ~~person also sells a vehicle at retail, he shall be deemed to be~~
 3 ~~a dealer and is subject to the dealer licensing provisions of~~
 4 ~~the Motor Vehicle Code];~~

5 (4) distributing of vehicles. Any person who
 6 distributes or sells new or used motor vehicles to dealers and
 7 who is not a manufacturer shall be presumed to be conducting
 8 the business of distributing vehicles; or

9 (5) a title service company. Any person who
 10 for consideration prepares or submits applications for the
 11 registration of or title to vehicles shall be presumed to be
 12 engaging in the business of a title service company.

13 B. Application for a dealer, wholesaler,
 14 distributor or wrecker of vehicles license or a title service
 15 company license shall be made upon the form prescribed by the
 16 department and shall contain the name and address of the
 17 applicant and, when the applicant is a partnership, the name
 18 and address of each partner or, when the applicant is a
 19 corporation, the names of the principal officers of the
 20 corporation and the state in which incorporated and the place
 21 where the business is to be conducted and the nature of the
 22 business and such other information as may be required by the
 23 department. Every application shall be verified by the oath or
 24 affirmation of the applicant, if an individual, or, in the
 25 event an applicant is a partnership or corporation, by a

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1 partner or officer of the partnership or corporation. Every
2 application shall be accompanied by the fee required by law.

3 C. ~~[Any]~~ A metal processor or dealer in scrap who
4 dismantles, processes for scrap, shreds, compacts, crushes or
5 otherwise destroys more than three vehicles within a period of
6 one year shall be licensed pursuant to the provisions of
7 Sections 66-4-1 through 66-4-9 NMSA 1978.

8 D. ~~[In order]~~ To ensure that a dealer, wholesaler,
9 distributor, wrecker of vehicles or title service company
10 complies with this section, the secretary may apply to a
11 district court of this state to have a person operating without
12 a license as required by this section or operating without the
13 bond required by Section 66-4-7 NMSA 1978 enjoined from
14 engaging in business until that person complies with the
15 requirements of licensing as provided by this section and the
16 bonding requirements of Section 66-4-7 NMSA 1978.

17 E. Upon application to a court for the issuance of
18 an injunction against an unlicensed person, the court may
19 ~~[forthwith]~~ issue an order temporarily restraining that person
20 from doing business. The court shall hear the matter within
21 three days and, upon a showing by the preponderance of the
22 evidence that the person is operating without a license and
23 that the person has been given notice of the hearing as
24 required by law, the court may enjoin the person from engaging
25 in business in New Mexico until the person ceases to be

1 unlicensed. Upon issuing an injunction, the court may also
 2 order the business premises of the person to be sealed by the
 3 sheriff and may allow the person access thereto only upon
 4 approval of the court.

5 F. ~~[No]~~ A temporary restraining order shall not be
 6 issued against a person who has complied with the provisions of
 7 this section. Upon a showing to the court by a person against
 8 whom a temporary restraining order has been issued that he has
 9 a license in accordance with the provisions of this section,
 10 the court shall dissolve or set aside the temporary restraining
 11 order. "

12 Section 2. Section 66-12-3 NMSA 1978 (being Laws 1959,
 13 Chapter 338, Section 3, as amended) is amended to read:

14 "66-12-3. DEFINITIONS.--As used in the Boat Act:

15 A. "vessel" means every description of watercraft,
 16 other than a seaplane on the water, used or capable of being
 17 used as a means of transportation on water;

18 B. "motorboat" means any vessel propelled by
 19 machinery, whether or not machinery is the principal source of
 20 propulsion, but does not include a vessel ~~[which]~~ that has a
 21 valid marine document issued by the bureau of customs of the
 22 United States government or any federal agency successor
 23 thereto; "motorboat" includes any vessel propelled or designed
 24 to be propelled by sail and ~~[which]~~ that does not have a valid
 25 document issued by a federal agency, but does not include a

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1 sailboard or windsurf board;

2 C. "owner" means a person, other than a lienholder,
3 having the property in or title to a motorboat; "owner"
4 includes a person entitled to the use or possession of a
5 motorboat subject to an interest in another person, reserved or
6 created by agreement and securing payment or performance of an
7 obligation, but excludes a lessee under a lease not intended as
8 security;

9 D. "waters of this state" means [~~any~~] waters within
10 the territorial limits of this state;

11 E. "person" means an individual, partnership, firm,
12 corporation, association or other entity;

13 F. "operate" means to navigate or otherwise use a
14 motorboat or a vessel;

15 G. "state agency" means any department,
16 institution, board, bureau, commission, district or committee
17 of the government of this state and means every office or
18 officer of any state agency;

19 H. "subdivision of the state" means every county,
20 county institution, board, bureau or commission, incorporated
21 city, town or village, drainage, conservancy, irrigation or
22 other district and every office or officer of any subdivision
23 of this state;

24 I. "division" means the state [~~park and recreation~~]
25 parks division of the energy, minerals and natural resources

1 department;

2 J. "boat" means a motorboat [~~which~~] that is ten
3 feet in length or longer;

4 K. "dealer" means any person who engages in whole
5 or in part in the business of buying, selling or exchanging new
6 and unused motorboats or used motorboats, or both, either
7 outright or on conditional sale, bailment, lease, chattel
8 mortgage or otherwise and who has an established place of
9 business for sale, trade and display of motorboats; "dealer"
10 includes a yacht broker;

11 L. "lien" means every chattel mortgage, conditional
12 sales contract, lease, purchase lease, sales lease, contract,
13 security interest under the Uniform Commercial Code or other
14 instrument in writing having the effect of a mortgage or lien
15 or encumbrance upon, or intended to hold the title to any boat
16 in the former owner, possessor or grantor;

17 M. "manufacturer" means any person engaged in the
18 business of manufacturing or importing new and unused
19 motorboats for the purpose of sale or trade;

20 N. "demonstration" means:

21 (1) the operation of a motorboat on the waters
22 of this state for the purpose of selling, transferring,
23 bartering, trading, negotiating or attempting to negotiate the
24 sale or exchange of an interest in a motor boat; or

25 (2) the operation of a motorboat by a

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1 manufacturer for the purpose of testing the motorboat; and
2 0. "established place of business" means a
3 salesroom in an enclosed building or structure that the dealer
4 owns or leases, where the business of bartering, trading and
5 selling of motorboats is conducted and where the books, records
6 and files necessary to conduct the business are maintained. "

7 Section 3. Section 66-12-6 NMSA 1978 (being Laws 1965,
8 Chapter 48, Section 1, as amended) is amended to read:

9 "66-12-6. [~~DEALERS'~~] DEALER AND [~~MANUFACTURERS'~~
10 ~~IDENTIFICATION~~] MANUFACTURER NUMBERS-- FEE [~~FACSIMILES~~]-
11 ~~CERTIFICATES OF ORIGIN-- RECORDS. --~~

12 A. [~~Every person, business, association or~~
13 ~~corporation engaged in the business of selling or manufacturing~~
14 ~~motorboats and demonstrating~~] A dealer or manufacturer that
15 demonstrates motorboats on the public waters of this state
16 shall file an application for a [~~dealer's~~] dealer or
17 [~~manufacturer's~~] manufacturer number. [~~this~~] The number shall
18 be in lieu of a certificate of number for each motorboat
19 intended or offered for sale.

20 B. Application for a [~~dealer's~~] dealer or
21 [~~manufacturer's~~] manufacturer number shall be in the form
22 prescribed by the division. The application shall state that
23 the applicant is a [~~bona fide~~] motorboat dealer or manufacturer
24 [~~of motorboats demonstrating his product on the public waters~~
25 ~~of New Mexico~~] and that the applicant will operate a motorboat

1 upon the waters of this state only for test or demonstration
 2 purposes. The statement shall be verified before [an] a state
 3 officer [of this state] who is authorized to administer an
 4 oath. The fee for a [dealer's] dealer or [manufacturer's]
 5 manufacturer number is ten dollars (\$10.00) annually as
 6 prescribed by the division.

7 C. The division shall issue a certificate of a
 8 dealer or manufacturer number to an applicant who submits a
 9 complete application and full payment of the dealer or
 10 manufacturer number fee to the division. The certificate shall
 11 be issued after the applicant obtains a dealer license from the
 12 motor vehicle division of the taxation and revenue department
 13 and shall contain the following:

14 (1) a dealer or manufacturer number that
 15 contains two state identification letters, followed by four
 16 numbers and two additional letters that are unique to dealers
 17 or manufacturers;

18 (2) the expiration date of the certificate;

19 (3) the name and business address of the
 20 applicant;

21 (4) the address of the principal place of
 22 business of the applicant; and

23 (5) a conspicuous statement that the division
 24 has certified the applicant as a dealer or manufacturer.

25 D. The [dealer's] dealer or [manufacturer's]

1 manufacturer number shall be [~~displayed by any~~] painted on or
2 attached to plates that are firmly attached to each side of the
3 front of a motorboat of the dealer or manufacturer [~~at all~~
4 ~~times during which~~] while it is afloat upon the [~~public~~] waters
5 of this state.

6 [~~B. Every dealer or manufacturer holding a dealer's~~
7 ~~or manufacturer's number may issue two reasonable facsimile~~
8 ~~numbers, making a total of three numbers which may be possessed~~
9 ~~or used by him. Dealer's or manufacturer's numbers and~~
10 ~~facsimile numbers shall be in the form and displayed in the~~
11 ~~manner prescribed by the division.~~]

12 E. A dealer or manufacturer who operates more than
13 one motorboat for test or demonstration purposes on the waters
14 of this state at the same time shall obtain and display a
15 separate dealer or manufacturer number for each motorboat
16 tested or demonstrated.

17 [~~C.~~] F. A manufacturer or dealer shall not transfer
18 ownership of a new boat without supplying the transferee with
19 the manufacturer's certificate of origin signed by the
20 manufacturer's authorized agent. The certificate shall contain
21 information the division requires.

22 [~~D.~~] G. Every dealer shall maintain for three years
23 a record of any boat he bought, sold, exchanged or received for
24 sale or exchange. This record shall be open to inspection by
25 division representatives during reasonable business hours. "

1 Section 4. A new section of the Boat Act is enacted to
2 read:

3 "[NEW MATERIAL] PROHIBITED DISPLAY OF DEALER OR
4 MANUFACTURER NUMBERS. -- A dealer or manufacturer shall not
5 display a dealer or manufacturer number on a motorboat that is
6 not being operated for test or demonstration purposes."

7 Section 5. A new section of the Boat Act is enacted to
8 read:

9 "[NEW MATERIAL] DEALER LICENSE. --

10 A. A person shall not engage in business as a
11 dealer or manufacturer without obtaining a valid dealer license
12 from the motor vehicle division of the taxation and revenue
13 department. A dealer or manufacturer shall annually file an
14 application with the motor vehicle division for a dealer
15 license for each established place of business of the dealer or
16 manufacturer.

17 B. A person shall file an application for a dealer
18 license with the motor vehicle division of the taxation and
19 revenue department on a form prescribed by the motor vehicle
20 division. The application shall contain the name, address and
21 telephone number of the applicant, the signature of the
22 applicant or the signatures of all of the officers of a
23 corporate applicant, the address of the established place of
24 business, the federal taxpayer identification number of the
25 applicant and other information that the motor vehicle division

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1 may require. The application shall state that the applicant
2 will engage in business as a dealer. The statement shall be
3 verified before a state officer authorized to administer an
4 oath. The fee for a dealer license shall be prescribed by the
5 motor vehicle division but shall not exceed fifty dollars
6 (\$50.00) annually.

7 C. The motor vehicle division of the taxation and
8 revenue department shall issue a dealer license to an applicant
9 who submits a complete application and full payment of the
10 dealer license fee to the motor vehicle division. The license
11 shall contain the following:

- 12 (1) the license number;
- 13 (2) the expiration date of the license;
- 14 (3) the name and business address of the
15 licensee;
- 16 (4) the address of the location for which the
17 license was issued; and
- 18 (5) a statement requiring that the license be
19 conspicuously displayed at the location for which the license
20 was issued.

21 D. A dealer license shall specify the location of
22 each place of business in which the licensee engages in
23 business as a dealer. The dealer shall notify the motor
24 vehicle division of the taxation and revenue department of a
25 change of ownership, location or name of the place of business

1 within ten days of the change.

2 E. A dealer license shall authorize the licensed
 3 activity at only one business establishment. A dealer shall
 4 obtain a supplemental license from the motor vehicle division
 5 of the taxation and revenue department for each additional
 6 establishment owned or operated by the dealer. The application
 7 for a supplemental license shall be in a form prescribed by the
 8 motor vehicle division. The motor vehicle division shall issue
 9 a supplemental license to an applicant who possesses a valid
 10 dealer license, submits a complete application and meets all
 11 other requirements of the motor vehicle division.

12 F. A dealer license or supplemental license shall
 13 be conspicuously displayed at the location of the established
 14 place of business for which it was issued. "

15 Section 6. A new section of the Boat Act is enacted to
 16 read:

17 "[NEW MATERIAL] DEALER LICENSE DENIAL, SUSPENSION AND
 18 REVOCATION. --The motor vehicle division of the taxation and
 19 revenue department may deny, suspend or revoke a dealer license
 20 for:

21 A. a material misrepresentation communicated by a
 22 dealer to the motor vehicle division;

23 B. a lack of fitness as proscribed by rule of the
 24 motor vehicle division; or

25 C. a willful violation of a federal or state law

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underscored material = new
 [bracketed material] = delete

1 relating to the sale, distribution, financing, registration,
2 taxing or insuring of motorboats. "

3 Section 7. A new section of the Boat Act is enacted to
4 read:

5 "[NEW MATERIAL] DEALER BONDS--REQUIRED INSURANCE. --A
6 person licensed as a dealer pursuant to the Boat Act shall file
7 with the state parks division a bond in the amount of fifty
8 thousand dollars (\$50,000) unless there is a bond on file with
9 the motor vehicle division of the taxation and revenue
10 department for a motor vehicle dealer's license and such proof
11 is submitted to the state parks division. The bond shall be
12 issued by a corporate surety licensed to conduct business
13 within the state. The bond shall be issued under the condition
14 that the applicant shall not practice fraud or violate any
15 provision of the Boat Act. A person who has obtained a dealer
16 license shall furnish evidence that the person has liability
17 insurance for the established place of business for which the
18 license was obtained. "

19 Section 8. A new section of the Boat Act is enacted to
20 read:

21 "[NEW MATERIAL] BOAT ACT VIOLATION--PENALTY. --A person who
22 violates any provision of the Boat Act is guilty of a
23 misdemeanor and shall be punished by a fine of three hundred
24 dollars (\$300) or by imprisonment for at least thirty days, or
25 both. "

